IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 519 OF 1993

1) M/s. Standard Surveillance)
Corporation, a partnership firm)
duly registered under Indian)
Partnership Act, 1932, having)
its office at Masjid Manor,)
16, Bruce Street, Bombay-400023)
2) G. V. Sethuram Babu, since)
deceased, by his heirs and)
legal representatives :-)
a) Mrs.Balam Sethuram, Age 86,)
residing at Prohi, 2/29,)
Shivaji Park, Bombay-400028)
b) Bhaskar Sethuram, Age 61,)
Standard Surveillance)
Corporation, 17, 2nd Line)
Boarch, Madras-600 001.)
c) Mrs. Vidya Subramaniam, Age)
68, 16, Shah Building, II,)

Bhagat Galli, Opp. T.H.)
Kataria Marg, Bombay-400037.)
d) Mrs.Chitra Balasubramaniam,)
Age 58, Flat No.26, Fair)
View, 6th Road, Chembur,)
Bombay - 400 071.).. Petitioners.
(Orig.Plaintiffs)

VERSUS

1) M/s. Mohanlal Bhatia & Co.,)
a firm carrying on business at)
Masjid Manor, 16, Bruce Street,)
Bombay - 400 001. ....)
2) Narayandas Bhatia (since)
deceased) (Partner of No.1 firm)
a) Smt.Kundibai Naraindas Bhatia)
b) Murlidhar Naraindas Bhatia)
c) Pritandas Naraindas Bhatia)
d) Shamsunder Naraindas Bhatia)
e) Jethanand Naraindas Bhatia)
f) Jawahar Naraindas Bhatia)
(Jethanandani),)
g) Arjan Naraindas Bhatia,)
h) Bhagwan Naraindas Bhatia,)

i) Mrs. Mohini M. Bhatia,)
(Partners of No.1 firm Nos.2(a)))
to 2(i).)
3) Chaturbhuj Bhatia.)
(Partner of No.1 firm))
All having place of business at))
Masjid Manor, 16, Bruce Street,))
Fort, Bombay - 1.)... Respondents.
(Orig.Defendants).

Mr. P.N.Karlekar for the Petitioners.
None for the Respondents.

CORAM : R.M.S.KHANDEPARKAR, J.
DATED : 24TH NOVEMBER, 2004.

ORAL JUDGMENT :

Heard advocate for the Petitioners. None present for the Respondents, though served. Perused the record.

2. The Petitioners challenge the judgment and order dated 29th April, 1993 passed in Bombay City Civil Court Suit No. 4477 of 1972. By the impugned Judgment the suit filed by the Petitioners under Section 6 of the Specific Relief Act has been dismissed holding that the Petitioners were not in exclusive possession of the suit premises on the date they alleged to have been dispossessed therefrom.

3. While challenging the impugned order, the learned Advocate appearing for the Petitioners, has submitted that the Court below erred in arriving at the finding that the Petitioners were merely allowed to use the table space since January 1970 as there is no material on record to substantiate the said finding. He has further submitted that the material on record clearly disclose that though the Petitioners had acquired new office premises, the Petitioners continued to have their belongings in the suit premises and they were also in possession of the duplicate key of the lock to the suit premises. Besides that their peon used to visit the suit premises occasionally to collect the postage as well as the electricity bill in relation to

the suit premises as the electric meter supplied by the Corporation was in the name of the Petitioners. According to the learned Advocate for the Petitioners, the Respondents did not produce any document to disclose that the licence granted in the year 1958 was ever surrendered either in the year 1962 or any time thereafter.

4. Learned Advocate for the Petitioners, however, has fairly conceded that the suit filed by the Petitioners for declaration and consequential reliefs in relation of their leasehold rights being R.A.D. Suit No. 1217 of 1993 has been dismissed on merits by the Small Causes Court at Bombay by Judgment dated 23rd October, 2002. He has, however, placed reliance on the decision of the learned single Judge of this Court in **Atmaram Panduji Tidke v/s Prabhawatibai Dattatraya Pakode & Ors.,** reported in AIR 1971 Bombay 148, and submitted that the only issue which is relevant for consideration in the suit under Section 6 of the Specific Relief Act is as to whether the Plaintiff was in possession within six months prior to the date of the suit and that he has been dispossessed therefrom

otherwise than in due course of law and considering the same, dismissal of the suit filed in terms of the provisions of the law comprised under Section 5 of the Specific Relief Act can not prejudice the rights of the Petitioners in the present proceedings and this Court will have to decide the claim under Section 6 of the Specific Relief Act independently of the decision of the trial Court in the said suit under Section 5 of the Specific Relief Act.

5. There can be no quarrel about the proposition that in the suit under Section 6 of the Specific Relief Act the only question for determination arises is whether the Plaintiffs were in possession of the suit premises within six months prior to the date of the suit and that the Plaintiffs had been dispossessed within that period otherwise than in due course of law. That is the settled law in relation to the suits under Section 6 of the Specific Relief Act and that has been reiterated by the learned single Judge in **Atmaram Panduji Tidke's case.** However, the fact remains that under Section 5 of the Specific Relief Act a party is entitled to seek possession of the specific immovable

property in the manner provided by the Code of Civil Procedure and that was sought to be done by the Petitioners by filing Suit No. 1217 of 1993 in the Small Causes Court at Bombay and undisputedly in such suits even the rights of the parties to the property in question are adjudicated upon.

6. Once the Court, after considering the rival contentions of the parties, has arrived at the finding about the absence of right to the Petitioners to occupy the suit premises and such decision having been arrived at after according full opportunity to lead evidence in support of rival contentions of the parties, merely because the suit under Section 6 was disposed of earlier to the suit under Section 5, that would not be to the advantage of such party to insist that irrespective of the decision in the suit under Section 5, the Court will have to deal with the matter under Section 6. Undoubtedly, once the suit under Section 6 is disposed of nothing prohibits the Plaintiff in such a suit from suing the Defendant to establish his title to the property in question and to recover possession thereof and undoubtedly such suit

would be in terms of Section 5 of the Specific Relief Act. In other words, a decision in a suit under Section 6 being merely related to the issue of possession within a period of six months prior to the institution of the suit, whereas the issue in a suit under Section 5 being related to the title of the parties to the property in dispute and adjudication in that regard, certainly, any decision arrived at in the latter suit will include the right to possess the property in question in a suit under Section 6 and as adjudication in relation to the said issue being done in detail, any decision in that regard will have to be considered as the final adjudication in relation to the possession of the property in question and being so if a decision adverse to the plaintiff is given in such a suit under Section 5, the Court would not be justified in entertaining the plea for restoration under Section 6 after such adjudication. The decision in a suit under Section 5 being on merits of the case of the parties which include rights of the parties to the property in question, such adjudication would bind the parties and thereafter it will not be open to the parties to agitate any claim under Section 6 of the

Specific Relief Act. Viewed from this angle in fact it is not necessary to deal with the various contentions sought to be raised in the matter and that itself would justify the dismissal of the present petition.

7. Even otherwise, there is absolutely no case on merits. The Court below on detail analyses of evidence has arrived at a finding that though initially in the year 1958 the Petitioners were granted licence to occupy the suit premises, since 1970 the Petitioners ceased to occupy the premises and started merely using a table space in the premises. Undisputedly, the Petitioners are having merely a duplicate key of the lock to the premises whereas the other key is with the Respondents.

8. It was sought to be contended that the electric meter to the premises is in the name of the Petitioners and the consumption charges were being paid by the Petitioners. Once it is not in dispute that in the year 1958 the Petitioners were inducted in the suit premises as licensee and were alleged to have

obtained the electric connection to the premises in their name, merely because the electric meter continued in the name of the Petitioners that itself cannot lead to the conclusion that the suit premises were in possession of the Petitioners in the year 1971 when the Petitioners claim to have been dispossessed from the suit premises. That apart, the trial Court on detail analysis of the evidence has held that the electricity bills, at Exhibit No.7, for the period November, 1969 to November, 1971 i.e. for a period of two years disclosed the consumption of 60 units in October, 1969 whereas for the next two years it disclosed consumption of only five units. This apparently discloses that after October, 1969 there was almost no use of electricity through the meter which was stated to be in the name of the Petitioners.

9. Since the suit filed by the Petitioners claiming that the Petitioners were in possession of the suit premises in the year 1971 it was necessary for the Petitioners to establish the same by cogent evidence being produced on record in that regard. Apart from bare statement that some belongings to the Petitioners

continued to be in the suit premises and their peon used to visit the premises to collect the postage and electricity bills, there is no material evidence as such produced on record to establish their claim of possession in respect of the suit premises and being so no fault can be found with the findings arrived at by the trial Court that since 1970 the Petitioners were merely using a table space and were not in possession of the suit premises. The dismissal of

the suit under Section 6 of the Specific Relief Act cannot be found fault with for the reasons stated above.

10. Therefore, there is no case for interference in the impugned judgment in exercise of the revisional jurisdiction under Section 115 of the Code of Civil Procedure and hence the Civil Revision Application is dismissed. In the circumstances of the case, there shall be no order as to costs.

Sd/-

(**R.M.S.KHANDEPARKAR,J.**)

TRUE COPY

(A. M. TAILOR)
Personal Assistant to the
Honourable Judge.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 159 OF 2003

IN

CIVIL REVISION APPLICATION NO. 519 OF 1993

M/s. Standard Surveillance
Corporation and others. .. .. Petitioners.

VERSUS

M/s. Mohanlal Bhatia & Co. & Ors. .. Respondents.

Mr. P.N.Karlekar for the Petitioners.

None for the Respondents.

CORAM : R.M.S.KHANDEPARKAR, J.

DATED : 24TH NOVEMBER, 2004.

P. C. :

In view of the disposal of the Civil Revision Application No. 519 of 1993, the Civil Application does not survive and hence stands disposed of accordingly.

Sd/-

(R.M.S.KHANDEPARKAR, J.)